

Fair treatment, fair trial

In recent years, a number of high-profile cases of criminalisation of seafarers have attracted great attention. Masters and officers, entrusted by their employers to carry cargoes or passengers, in high-asset-value, multi-million-pound vessels, now face the real danger of being arrested while in the line of duty, and worse, of being made a scapegoat.

In March 1989, the oil tanker *Exxon Valdez* struck Bligh Reef on Alaska's Prince William Sound, unleashing one of the biggest oil spills in history. The Master, Captain Joseph Hazelwood, was charged with operating a watercraft while intoxicated, reckless endangerment and negligent discharge of oil. After a much-heralded prosecution, he was fined \$50,000 and sentenced to 1,000 hours of helping to clean up the beaches of Prince William Sound.

Quite what fate awaits Captain Francesco Schettino, Master of

the cruise liner *Costa Concordia*, following the death of several passengers when his vessel hit a rock outcrop off the Tuscan coast on 13 January this year, is another story. In both cases, the adverse media coverage was unprecedented. The rush to judgment, condemnation and vilification of the Masters, before a full investigation had even got under way, has given cause for grave concern.

The two incidents are reminders of the constant threat of what could befall a seafarer as he goes about his professional duties. These events pose serious challenges to an industry anxious to improve its image and desperate to attract high-calibre seafarers at a time of a massive newbuild programme and a looming crisis in manning levels.

"For those in command of vessels today, what was once a traditional honour associated with the position has become a perilous burden," says Deirdre Fitzpatrick, Executive Director of Seafarers' Rights International

(SRI), the international centre for advancing the legal protection of seafarers.

SRI is the first centre of its kind dedicated to research, education and training in seafarers' legal rights. Its first major study of these rights is on seafarers' rights and the criminal law – when a Master, an officer or crew member faces criminal charges as a result of an incident or an accident connected with their working environment.

"The issues surrounding criminalisation are complex and confusing – even for experienced lawyers. So how can an ordinary seafarer be expected to know what to do when he is arrested in a foreign country, unable to speak the language and denied access to legal representation?" says Ms Fitzpatrick. "Ships routinely operate within and across multiple jurisdictions and seafarers are at risk of committing an offence, even when they have no awareness, or indeed the intention, of doing so."

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- Deirdre Fitzpatrick
Executive Director, SRI



Profile: Judge Thomas Mensah Member, SRI Advisory Board

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Judge Thomas Mensah’s visible commitment to advancing the rights of seafarers can be pinpointed to his role as Chair of the steering committee for the research project that produced the first international publication on seafarers’ rights.

Seafarers’ Rights, edited by Deirdre Fitzpatrick, Executive Director of Seafarers’ Rights International (SRI), and Michael Anderson, embodies the work of the research project on the laws affecting seafarers in their working lives. In its Foreword, Judge Mensah wrote: “What is difficult to understand is why a major global industry, with a creditable historical record, should be so careless in the way it deals with one of its most important assets. For, no matter from which point of view one looks at the matter, it must be clear that ship owners and ship operators have much to gain from the high quality and motivation of the seafarers who work on their vessels.”

It was a natural transition from this involvement to the Advisory Board of SRI. “I accepted the invitation to serve on the Board,” he said, “because it gives me a unique opportunity to contribute something to the solution of problems affecting seafarers’ rights. Through my association with the International Maritime Organization (IMO) and other organisations concerned with the problems of international shipping, I have become acutely aware, on the one hand, of the importance to the industry of well-trained and motivated seafarers and, on the other, of the many handicaps under which seafarers operate all over the world.”

Judge Mensah was on assignment with the International Atomic Energy Agency in Vienna when a UN lawyer spotted his considerable talent and recommended him for an appointment to the IMO. With no previous experience in maritime law, he joined the IMO in 1968, on a one-year contract, as Head of its newly created legal division; he stayed for more than 20 years, becoming IMO’s Assistant Secretary-General in 1980.

An only child, Tom Mensah was born in Kumasi, Ghana. He graduated from the University of

Ghana with a Philosophy degree, but later read law at the University of London, followed by a post-graduate law degree at Yale University Law School, where Prof. Myles McDougal inspired him. “He instilled in me the importance of intellectual honesty and the obligation to follow the argument to wherever the evidence and logic may lead, even if this means having to change your most cherished positions. What I learned along the way is that hard work and personal discipline are essential for success, as well as tolerance and the willingness to accept the views and beliefs of others when one is unable to agree with them.”

In 1996, he became a Judge – and later, the first elected President – of the UN’s International Tribunal for the Law of the Sea (ITLOS). For his work with ITLOS, he was awarded the prestigious Commander’s Cross of the Order of Merit. Inducted into the International Maritime Hall of Fame, he has been generously garlanded, in recognition of a lifetime’s contributions to international law across four continents.

Judge Mensah says the shipping industry today faces the challenge of demonstrating it values seafarers whose hard work and expertise keep the industry moving. “The need to protect the interests of seafarers has become greater as a result of new developments in shipping and the crisis in the global economy,” he said. “It has also become more apparent that any programme to protect seafarers’ rights would be more successful if it is based on well-researched information and data, rather than being driven mainly by passion or as part of a partisan crusade against other actors in the industry. A centre, such as SRI, that undertakes well-documented conclusions and recommendations, is more likely to make a constructive contribution to what is a difficult problem.”

He added: “It boils down to how the industry’s key players view the strengthening and increasing of seafarers’ rights, not just because it’s good for seafarers, but also because it’s good for the industry. There have been some very important improvements in the status and treatment of seafarers, but a great deal still needs to be done.”

Profile:

Rear-Admiral Jean-Marc Schindler

Member, SRI Advisory Board

Following several years at sea on board French Naval ships, Rear-Admiral Jean-Marc Schindler clocked up 25 years' experience of both foreign affairs and maritime affairs – all of which very neatly led to his appointment in 1999 by the International Labour Organization as Chair of the Joint International Maritime Organization (IMO)/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment. "France was already reviewing different international instruments and national regulations relating to seafarer claims and supported proposals for an international fund or insurance to assist seafarers," he said. "We had a head-start."

In 2001, in a smooth transition, Jean-Marc was appointed Chair of the IMO/ILO High-Level Tripartite Working Group on Maritime Labour Standards, which gave birth to the landmark Maritime Labour Convention 2006 (MLC).

The timing of SRI's creation in 2010 was, he said, "perfect."

"SRI can have a hugely important role in facilitating MLC's implementation, in so far as it aims to bring a real difference to the lives of seafarers who will benefit from a new and modern instrument which encapsulates and enhances observance and enforcement of more than 65 international maritime labour standards that have been adopted since ILO was founded in 1919."

Jean-Marc recalls that the first working group he chaired has given legal recognition to the serious problems associated with the abandonment of seafarers. "These included their immigration status, repatriation, the material and moral support they needed while stranded and the payment of outstanding wages. We looked at 212 cases, from 1995 to 1999 alone, of over 3,500 abandoned seafarers. The problems were real and grievous, each one involving a human and social dimension, each one requiring urgent attention," he said. "SRI's work on abandonment is crucial for shining a light on the abuse and exploitation of seafarers. The research will stimulate international and national efforts, which I hope will contribute to securing a rapid and effective financial and social security assistance for seafarers when abandoned."

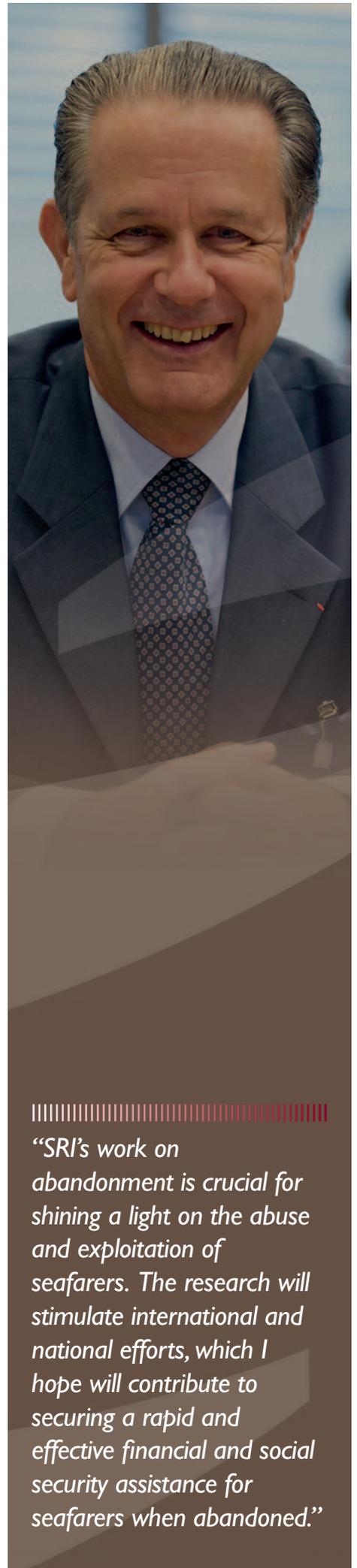
Work on the MLC – described as a 'unique event in the history of the ILO' – marked the first concerted attempt to create a truly global legal instrument for a specific sector of industry – seafarers. As Chair of the MLC Working Group, Jean-Marc presided over 1,000 participants representing seafarer bodies, ship

owners, over 100 government representatives from ILO's 178 member-states, welfare organisations and other NGOs. "We needed a spirit of consensus. With the growth of globalisation, everyone was aware that this Convention was needed at a time of great, historically significant social progress. If successful, the MLC will represent the most sweeping and comprehensive global instrument ever forged, binding together seafarers, maritime countries, flag States and the world's ship owners." He added: "SRI, as an instrument for advancing the legal protection of seafarers' rights, is best placed to ensure that ratifying countries do honour their obligations to respect these rights and to ensure better protection of seafarers by those who employ them."

As a Deck Officer, 25-year-old Jean-Marc joined the French Navy to satisfy an "overwhelming desire to see the world". He performed peacekeeping duties on warships, including a tour of duty of the Suez Canal clearing it of mines and explosives, all the while studying maritime law. Coming ashore and after graduating from the prestigious Ecole d'Administration des Affaires Maritimes, he launched a distinguished career in French maritime administration, including being in command of GRIZ-NEZ Maritime Rescue Coordination Center and Vessel Traffic Services. Following this, he became Director of Maritime Affairs for the ports of Dunkirk and Calais, in charge of port state control and initiating joint maritime inspection activities between France and Britain. Later, he became his country's permanent representative to the IMO. As a visiting professor, Jean-Marc contributed to the maritime-administration module of the courses offered at the World Maritime University in Malmo.

Jean-Marc was assigned to France's Ministry of Foreign Affairs in the wake of the *Erika* and *Prestige* disasters. He was largely instrumental in raising the level of compensation paid out by the International Oil Pollution Compensation Funds. From there, he headed up the Bureau d'Enquetes sur les Evenements de Mer, the French Marine Accident Investigation Office. In addition to his SRI commitment, Jean-Marc is a consultant for the IMO; in recent months he has been leading an IMO course in Morocco to help about 10 West African countries set up a marine accident investigation body.

"My SRI involvement is very much in line with my previous roles; seafarers' welfare is very important to me. I know what the problems are because I gained a wide and practical experience. I believe we can make a real difference in ensuring that, among other things, the provisions of the MLC are respected and in so doing, advance the legal protection of seafarers around the world."



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New Recruits Invited for SRI's 2012 Internship Scheme



As spring approaches, SRI is looking forward to inviting new recruits to apply for a place in the centre's popular legal internship programme. The scheme provides the opportunity to gain a unique insight into the complex legalities that affect the seafaring community and for individuals to pursue their education and training in the field of seafarer rights.

Four positions will be available this year, with applications being invited from around the world for two schemes: the stakeholder-sponsored scheme, for members of unions, welfare bodies (including faith-based organisations), and practitioners who already deal with seafarers' rights; and the summer vacation scheme, for undergraduate/ post-graduate law students and newly qualified lawyers.

"At present, there are insufficient opportunities for those involved in this field to further develop their knowledge in the area of maritime law and, in particular, seafarers' rights," said Deirdre Fitzpatrick, SRI Executive Director. "We also need to support those law students who wish to focus on this important area, with a view to forging their careers in maritime law. We

hope our internship scheme encourages the study of subjects around this particular field of law and that it contributes to the furthering of know-how and expertise on this subject."

Applications for 2012 are being invited from all around the world. Full details of the application process can be found on SRI's website, www.seafarersrights.org.

"I have thoroughly enjoyed the internship. The work has been interesting and has opened my eyes to many aspects of maritime law that I had not considered before."

Serhan Handani
(extreme right in picture)

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On SRI's agenda is to provide practical advice for seafarers so that they have information on their rights prior to sailing to foreign ports. SRI also works with its stakeholders to promote the Fair Treatment Guidelines and to pursue activities designed to sensitise governments and port officials to seafarers' issues. There are already initiatives under way to protect seafarers, such as a special defence and legal-cost insurance product offered by the International Federation of Shipmasters' Associations (IFSMA). "Accidents do happen and systems fail. The sea is an unforgiving environment, and provided there has been no malicious intent or gross negligence, no shipmaster should be treated like a criminal following a marine casualty," said IFSMA's Secretary-General, Capt. Roger MacDonald.

"For many seafarers, it is a lottery whether the ship owner or agent will stand by them. So much is at stake: their licence to ever work again; the stain on their character; the pain and hardship caused to their families, and what any human being values most of all: their individual liberty and freedom. What we need is a safety net for all seafarers," says Ms Fitzpatrick.

Since the early '90s, there appears

to have been a marked rise in what can be classed as potential offences, with countries exercising jurisdiction much more freely and broadly than ever before. Seafarers could be arrested for a range of offences, including environmental pollution, drugs smuggling, etc. Yet, there are no comprehensive statistics on the number of seafarers facing criminal charges, the rate of convictions, or the punishments given. "Seafarers are at risk of being criminalised with impunity because they are easy targets. We do not know how many seafarers are currently languishing in jails worldwide," says Ms Fitzpatrick.

She added: "Any seafarer found to have committed a criminal offence should, of course, be held accountable. But the due process of law should apply to him. Apportioning blame is prevalent in today's culture, but to assume guilt before any proof of wrongdoing has been established is an attack on seafarers' human rights and a massive disincentive to young people contemplating a career in shipping. The consequences – to seafarers' lives, their families and future livelihood – are enormous, not to say anything of the impact on the fortunes of the global shipping industry."

In November 2002, the tanker Prestige sank in heavy weather off the west coast of Spain, causing pollution. The maritime authorities denied the vessel and its Greek Master, Captain Apostolos Mangouras, access to a port for salvage operations. Despite warning three States that his vessel would sink unless he could bring it safely into port, and despite remaining on board until his entire crew had been evacuated, Capt. Mangouras was charged, jailed for three months and was released only after a P&I club provided a EUR3m bail bond.

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